IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20525 of 2005
With
SPECIAL CIVIL APPLICATION No. 20526 of 2005
To
SPECIAL CIVIL APPLICATION No. 20527 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMRUTBHAI GOBARBHAI TIRGAR & 2 - Petitioner(s)
Versus
DIST JUDGE, & 1 - Respondent(s)

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Appearance :
MR CB DASTOOR for Petitioner(s) : 1 - 3.
MR JB PARDIWALA for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 24/08/2006

ORAL JUDGMENT

1. The petitioners are peons working under the learned District Judge, Himatnagar and have approached this Court under Article 226 of the Constitution to challenge the selection list dated 8.9.2005 wherein several other peons were shown to have been selected for promotion to the post of bailiff and the names of the petitioners were not included. It is the case of the petitioners, generally, that they were qualified and eligible for promotion and they were senior to several other peons who were promoted. It is admitted in the petition itself that the respondent had intimated the employees of the District Court, Sabarkantha as well as the Taluka Court of the District who were discharging their duties as peons who appeared for interview on 8.9.2005. Since the petitioners had a good service record and no departmental enquiry was pending against them, they expected and anticipated that they would be promoted according

to their seniority. In short, the whole petition is based on the belief that the promotions were to be granted on the sole criterion of seniority. The petitioners have added the grievance that prior to the interview for promotion, no advertisement was issued and no written test was taken, resulting into assessment of the candidates only on the basis of oral interview. It was pointed out during the course of arguments that the initial list of the selectees included several candidates who had not completed the requisite service of three years and their names had had to be deleted from the list. However, some of the candidates whose names were so deleted were subsequently appointed on even higher post of Assistant (Junior Clerks) by the order dated 28.9.2005, of which copies were annexed with the affidavit-in-rejoinder.

2. It was submitted by learned counsel Mr Pardiwala, appearing for the respondent, on the basis of the affidavit of the Registrar of

District Court, Sabarkantha that the parties who were likely to be affected, if the prayers were granted, were not joined as respondents; that the averment of the petitioners that all promotions to the post of bailiff from peons were given only on the basis of seniority in the past was completely false and misleading; that the promotions were made in exercise of powers conferred upon the learned District Judge under Rule 19 of the applicable rules and that nobody had a right to claim promotions only on the basis of length of service or seniority. It is further stated that the petitioners had participated in the process of recruitment, appeared in the oral interview and other tests and were declared to be unsuccessful at the interview. It is stated on oath that the meeting of the Advisory Board was held on 18.7.2005 in the Chamber of Principal District Judge and the difficulties faced by the administration were discussed. In all 11 vacancies of bailiffs in various courts were to be filled up at the earliest. At that point of

time, it was noticed by the Committee that no select list was in existence for the post of bailiff. With a view to avoid hardship faced by different Courts, it was unanimously resolved that Class IV employees working in the establishment of Sabarkantha District Court and other Courts be considered for promotion purely on temporary and ad hoc basis till regular recruitment process was undertaken. Accordingly, in all 83 employees were called for interview on 8.9.2005. The report of the Presiding Officer was looked into and perused by the Advisory Committee and it was resolved that the merits of the candidates would be of prime consideration besides seniority, but seniority alone would not be the criterion. Keeping in mind the High Court's circular No. B-1421/82 dated 10.12.1991 and as per the Resolution dated 17.9.2005 of the Advisory Committee, names of all the candidates who had not completed three years' service in class IV cadre were deleted from the list and that was also published on the notice board on

the same date. Lastly, it is submitted that the petitioners were considered for promotion but were found unfit for the same by the Advisory Committee and, therefore, they were not given even ad hoc promotion.

3. The burden of the argument of learned counsel Mr Dastoor was that the whole process of selection was unfair insofar as senior peons like the petitioner were not selected for promotion while junior peons who were not even eligible were not only interviewed but firstly included in the selection list and thereafter issued the orders temporarily promoting them to the post even higher than that of bailiff. He fairly conceded that those orders posting the peons on the post of Assistant (Junior Clerk) were expressly by way of temporary arrangement, for the maximum period of one year and obviously did not confer any right upon those candidates. It was not the case of the petitioner that those candidates were not eligible for even temporary

posting on the other posts and in any case, those candidates are not joined as party-respondents in the petition. As for denial of promotion to the petitioners, no ground is made out or even canvassed to hold that the process of selection for promotion was in any way vitiated by either *mala fide* or any other illegality. On the contrary, it clearly appears that the petitioners have been given an equal opportunity of facing the interview and the promotions were made after the interviews by the Committee. Since the seniority or length of service of the petitioners is not shown to have conferred any right upon the petitioner for any special consideration in the matter of promotion, the petition has to be dismissed as misconceived and devoid of any substance. Accordingly, all the petitions are dismissed and notices are discharged with no order as to costs.

[D. H. Waghela, J.]

msp